

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION

SAMUEL JOSEPH ORLANDO,

Plaintiff,

v.

BRISTOL NEAL, *et al.*

Defendants.

No.: 5:23-cv-00012-MFU

**PLAINTIFF'S MOTION FOR APPOINTMENT OF GUARDIAN AD  
LITEM FOR DEPONENT JAMES GRAGG OR IN THE ALTERNATIVE  
FOR COMPETENCY DETERMINATION**

Plaintiff Samuel Joseph Orlando (“Mr. Orlando” or “Plaintiff”), by counsel, hereby moves, pursuant to Federal Rules of Civil Procedure, Rule 17(c)(2) this Court for the appointment of a guardian ad litem for Mr. James Randy Gragg or in the alternative for the Court to determine the competency of Mr. James Randy Gragg.

On October 11, 2023, Plaintiff served a deposition notice on Defendants’ counsel; a subpoena for that deposition was served on Mr. James Randy Gragg on October 11, 2023. The deposition was scheduled to occur on November 13, 2023.

Approximately one month after service on Defendants' counsel, Rebecca Neal directly<sup>1</sup> emailed Plaintiff's counsel and stated:

Mr Gragg is mentally ill. He was a raging alcoholic and was hospitalized on June third. Since that time he no longer drinks. However, Since he stopped drinking, he has not bathed or come out of his bedroom since June, He only comes out of the room to go to the bathroom and get food from the kitchen. He does not speak, he does not clean himself. He is under a doctor's care and on medication. Unfortunately, it seems to do nothing at all. Just notifying him of the deposition, sent him into a panic attack.

Later, Ms. Neal directly contacted the Court stating:

My name is Rebecca Neal. My son, Bristol Neal and I are involved in a case before Judge Urbanski. I wanted to contact you regarding an upcoming deposition with James Gragg. I have notified Mr. Lawrence regarding Mr. Graggs mental state and physical condition.

Mr. Gragg is my daughters fiance, he lives in our home along with their 11 year old daughter. Mr. Gragg was a raging alcoholic for quite some time. On June 3rd, he was admitted to the hospital for an extended stay. Since June, Mr. Gragg has not consumed alcohol, however, he has also not bathed or come out of his room. He does not converse with the other members of the household. He has worn the same clothes since June. When advised of the deposition, he had a panic attack. He has been under a doctor's care and on medication since June. Unfortunately, there has been no improvement. He is filthy, fairly incoherent and shows no indication of improvement prior to 11/13. I fear that a multi hour deposition will push him further away from being a functional person.

I understand that Mr. Gragg is an adult. I have no control over him appearing for his deposition. However, I don't want legal jeopardy added to his list of problems.

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<sup>1</sup> Defendants' counsel had previously explicitly given plaintiff's counsel permission to speak directly with his clients. The state of Defendants' representation in this case is unclear: although counsel has neither withdrawn nor noticed the Court of disqualification, there have been previous representations that his bar licensure would be suspended on November 6, 2023.

Given the above representations made by Ms. Neal, it appears that Mr. Gragg may be incompetent—additionally, it appears that Mr. Gragg (even given his current living situation) may lack the capacity to protect himself from harm and, more pertinently, provide for basic human needs, such as regular bathing and access to hygienic clothing, never mind adequately represent his legal interests.

Assuming Ms. Neal’s representations are accurate and truthful, the Court must, under Rule 17(c)(2), “appoint a guardian ad litem--or issue another appropriate order--to protect a minor or incompetent person who is unrepresented in an action.”

In support of this motion, Plaintiff submits a memorandum and the declaration of Zachary Lawrence; for the reasons set forth therein, Plaintiff respectfully requests that this Court grant their motion.

Dated: November 9, 2023  
Washington, DC

/s/Zachary Lawrence  
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